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THE JUVENILE JUSTICE ACT, 2015

~Mansi Gaur

BACKGROUND

Children are considered the future and foundation of society. Juvenile justice in India can be inferred through the Latin maxim Nil Novi Spectrum, which means 'nothing new on this planet'. For a long time, it was presumed that a child is said to have no sin from birth, and their surroundings should be held accountable for igniting their criminal tendencies. However, offenses committed by the child kept increasing, and the need for proper legislation was noticed.

The juvenile justice system in India was taken from Western countries. The phrase 'juvenile justice' is generally understood as referring to laws governing children committing offenses even though, technically speaking, juvenile justice has always taken note of children in need of care and protection in India, with the first legislation enacted in 1850. The Apprentice Act, passed in 1850, dealt with children in conflict with the law, giving authority to the court to treat children who had committed petty offenses as apprentices rather than as prisoners in jail. After this, in 1860, the Indian Penal Code was enacted, which has provisions regarding children conflicting with the law: Doli incapax, i.e., a child up to seven years of age cannot commit any offense, and a child between the age of 7 and 12 years having immature understanding not commit offense having presumption that Children are not aware of any offense committed. Following The Reformatory Schools Act 1876 and The Criminal Procedure Code, there was a recommendation by the Indian Jail Committee in 1920 for the reformation of jails for children. Accepting the recommendation, Madras, Bengal, and Bombay enacted The Children Act in 1920, 1922, and 1924 respectively. The Constitution of India, 1950, is a living document comprising various provisions favoring children. The Children Act enacted in 1960 only applies to the UTs; due to standard minimum rules for the administration

of juvenile justice adopted by UN countries, India has to repeal the legislation of 1960 and bring a new act. In 1986, The Juvenile Justice (Care & Protection of Children) Act was brought by the legislature in which the age was considered to be a child for a girl below 18 years and a boy below 16 years; this raised the question about the violation of Article 14 of the Constitution. Later, on 20th Nov 1989, the UN adopted the UN convention on the Rights of Child 1989 and forced India to revoke the 1986 act. By repealing the 1986 act, The Juvenile Justice (Care & Protection of Children) Act of 2000 was enacted, which corrected the age of minors both for girls and boys below 18 years. The maximum punishment under the JJ Act 2000 was three years, not in regular jail but in a reform home.

In the wake of the 2012 Delhi gang rape and murder case, one of the accused involved was six months short of attaining majority age and was sentenced to three years in a reformation home as per the provisions of the Juvenile Justice Act of 2000. This led to a widespread feeling of a failure of justice, with the masses protesting in unity with the victim's family.¹ In 2012-2014, there was a 30% rise in juvenile crime; 70% of juveniles accused of crimes were between the ages of 16-18. The increase in heinous crimes like rape, murder, etc., by Juveniles makes it hard to believe that the juvenile was not aware of the consequence. Due to these incidents the government enacted the Juvenile Justice (Care & Protection of Children) Act, 2015.

The JJ Act, 2015 contains the reasons and purposes of the Act which indicate that care, protection, development, and rehabilitation continue to be the purposes of this Act. Best interest of the child continues to be the basis for all processes and provisions in the JJ Act, 2015, as it is included in the Preamble of the Juvenile Justice Act itself.²

OVERVIEW OF THE JJ ACT, 2015

According to the JJ Act 2015, a juvenile or someone under 18 is a child. The act distinguishes two types of Children: children in need of care & protection (CNCP) and children in conflict with the law (CICL). The phrase '*child in conflict with law*' means a child who is alleged or found to have committed an offense and has not completed eighteen years of age on the date of commission of

¹ Parul Chaturvedi et. al., *Introduction and Overview of the Juvenile Justice Care and Protection Act, 2015*, iPleaders, (June 8, 2024, 8:29 PM), <https://blog.ipleaders.in/>.

² 1st ed VED KUMARI, VED KUMARI: *THE JUVENILE JUSTICE (CARE AND PROTECTION) ACT 2015: CRITICAL ANALYSIS*, (Universal Law Publishing - An imprint of Lexis Nexis 2017).

*such offense. The definition of CICP Under the new law remains the same, but there has been some inclusion; one of the most important is child labor.*³

Every district shall have a Juvenile Justice Board (JJB) constituted by the respective state governments to deal with CICL. The JJB, as per the statute, must consist of a Chief Metropolitan Magistrate or Chief Judicial Magistrate (referred to as Principal Magistrate) with at least three years of experience and two social workers, of whom at least one shall be a woman.⁴ Essential JJB member requirements are specified under Section 4 of the act.

When a CICL is produced before the JJB, if it is obvious from the appearance of the child that it is so, it may note the age and proceed with inquiry⁵. In other cases, the age is to be determined by adducing evidence. In order of preference, age is to be determined by reference to:

- i. the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof.
- ii. the birth certificate given by a corporation or a municipal authority or a panchayat.
- iii. and only in the absence of (i) and (ii) above, age shall be determined by an ossification test, or any other latest medical age determination test conducted on the orders of the Committee or the Board⁶

Offenses are of three types -

1. Petty offenses include offenses for which the maximum punishment under the IPC or any other law is imprisonment up to three years.
2. Serious offenses are those offenses for which one can get a maximum punishment up to 3 to 7 years under the Indian Penal Code or any other law being in force.
3. Heinous offenses include the offenses for which the minimum punishment under the IPC or any other law for the time being in force is imprisonment for seven years or more.

In case of a 16-18 year child alleged to have committed a heinous offence, the JJB has to "conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence" taking the help of experienced psychologists or psycho-social workers or

³ The Juvenile Justice (Care and Protection of Children) Act, 2015, § 2(13), No.2, Acts of Parliament, 2016 (India).

⁴ The Juvenile Justice (Care And Protection Of Children) Act, 2015, § 4, No.2, Acts of Parliament, 2016 (India).

⁵ The Juvenile Justice (Care And Protection Of Children) Act, 2015, § 94(1), No.2, Acts of Parliament, 2016 (India).

⁶ The Juvenile Justice (Care And Protection Of Children) Act, 2015, § 94(2), No.2, Acts of Parliament, 2016 (India).

other experts. After this assessment, the JJB may choose to dispose of the case itself or may decide to transfer the case to the children's court.⁷ Hence, Child (16-18 year) who committed a heinous offence will be treated and tried as adults only. The determination of the age of a juvenile is the date of commission of offence and not the date when the offender is produced before the competent authority or court.

Chapter V of the statute deals with Children in need of care & protection (CNCP). CNCP to be looked after by the state government or Child Welfare Committee (CWC). A child requiring care and protection must be presented before the Child Welfare Committee within 24 hours. If a child is found separated from their guardian, it must be reported under the Act. Failure to report is considered an offense. The Child Welfare Committee is obligated to refer the child in need of care and protection to the appropriate Child Care Institution and assign a social worker, case worker, or child welfare officer to conduct a social investigation within 15 days. The Child Welfare Committees are required to convene a minimum of 20 times per month, and the District Magistrate must conduct a quarterly assessment of the committee's operations.

A child in need of care and protection will be placed in a Children's Home for treatment, education, training, development, and rehabilitation. The Act establishes Open Shelters for Children in Need of Community Support for a Limited Time in order to protect children from abuse or keep them off the streets. A facility could be designated as a Fit Facility by the Child Welfare Committee to temporarily take on the responsibility of a child. The Specialized Adoption Agency is responsible for the rehabilitation of orphans, abandoned children, and children who have been relinquished.⁸ The Act provides for a range of residential options for the Children in Conflict with Law (hereafter referred as CCL) and Children in Need of Care and Protection (hereafter referred as CNCP) which include observation homes, special homes, children homes, place of safety, fit person, fit facility, shelter homes, etc. All childcare institutions housing children falling within the provisions of the JJ Act, 2015 must be registered.⁹

The JJ Act, 2015 also deals with adoption of children and lays down the eligibility criteria for adoptive parents for instance adoption by couple requires consent of both spouses and adoption by

⁷ Ved Kumari, *The Juvenile Justice Act 2015-Critical Understanding*, 58(1) JILI 83, 2016.

⁸ Namrata Tripathy, *An Overview of Juvenile Justice (Care and Protection of Children) Act, 2015*, 2(3) IJIRL, 2022.

⁹ *Id.* at 2.

single/divorced person except single male cannot adopt a girl child. Procedures for inter-country adoption by persons of Indian origin, Nonresident of India and foreign nationals are also specified under the act. The adopted child will have the same rights, privileges, and liabilities as of a natural born child. For the purpose of adoption, the state government shall set up State Adoption Resource Agencies and special adoption agencies in their respective states. There is central and statutory authority under the Ministry of Women and Child development of India founded in 1990 i.e. Central Adoption Resource Authority (CARA). CARA deals with the following functions -

- a) to promote in-country adoptions and to facilitate inter-State adoptions in coordination with State Agency.
- b) to regulate inter-country adoptions.
- c) to frame regulations on adoption and related matters from time to time as may be necessary.
- d) to carry out the functions of the Central Authority under the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption.
- e) any other function as may be prescribed.¹⁰

In the case of *L.K. Pandey v Association of India*, The Supreme Court emphasized in a public interest litigation that every child has the right to love and affection. It stressed the need to prioritize the welfare and security of the child by first seeking a legal guardian within the country. Additionally, it specified the legal requirements for intercountry adoptions, including the need for a Marriage Certificate with recent couple photographs and income records. In response to this, the Government of India established the Central Adoption Resource Agency in 1989 as a regulatory body to oversee intercountry adoptions.¹¹

The Juvenile Justice Act of 2015 includes a separate section for offenses against children, some of which were previously not adequately covered under any other law. These include trafficking and procurement of children for any purpose, including illegal adoption; physical abuse in a childcare facility; providing children with intoxicating substances; exploitation of children by criminal or adult groups; offenses against disabled children; and kidnapping. It also provided that if the offence included in the JJA is punishable under any other law also, the greater punishment will apply.¹²

¹⁰ The Juvenile Justice (Care And Protection Of Children) Act, 2015, § 68, No.2, Acts of Parliament, 2016 (India).

¹¹ *L.K. Pandey v Association of India*, AIR 1987 SC 232.

¹² *Id.* at 2.

CONCLUSION

In summary, the Juvenile Justice (Care and Protection of Children) Act, 2015 is a pivotal legislation in India that prioritizes the care, protection, and rehabilitation of children in conflict with the law. The Act strikes a harmonious balance between the rights of the child and the necessity for justice and rehabilitation. It places emphasis on a reformatory approach for juvenile offenders while ensuring their protection and successful reintegration into society. The Act has played a crucial role in addressing the complexities surrounding juvenile justice and championing a child-centric approach within the legal system. It is instrumental in safeguarding the rights and well-being of children involved in the criminal justice system and lays the groundwork for their rehabilitation and future opportunities.
